

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 004293
Issued to: John W. Schuiling

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2341

John W. Schuiling

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 22 December 1982, an Administrative Law Judge of the United States Coast Guard at Wilmington, N.C. admonished Appellant upon finding him guilty of misconduct. The specifications found proved allege that while serving as Chief Engineer on board the United States vessel SS JACKSONVILLE under authority of the license above captioned, on or about 8 October 1982, Appellant failed to notify the Officer in Charge, Marine Inspection, Baltimore, Maryland, that the main propulsion motor of the vessel was flooded, that on 8 October 1982 he allowed repairs to be made to the main motor without the cognizance of the Officer in Charge, Marine Inspection, and that on or about 13 October 1982, Appellant failed to immediately notify the Officer in Charge, Marine Inspection, Wilmington, N.C., of the failure at sea of the vessel's main motor.

The hearing was held at Wilmington, N.C., on 4 November 1982.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence three documents and the testimony of two witnesses.

In defense, Appellant offered in evidence the testimony of two witnesses.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and each specification had been proved. He then served a written order admonishing Appellant.

The entire decision was served on 22 December 1982. Appeal was timely filed on 5 November 1982 and perfected on 14 February 1983.

FINDINGS OF FACT

During the period 8-15 October 1982, Appellant was acting under the authority of his license as Chief Engineer on board the United States vessel SS JACKSONVILLE. At 1815 on 8 October 1982, while the vessel was moored at the Port of Baltimore, Maryland, the main propulsion motor was flooded by bilge water to a depth of approximately one and one-half feet and was rendered inoperative. The Coast Guard was not notified of the flooding.

The bilges were drained and the motor was repaired by drying it using heaters and blowers under the supervision of the manufacturer's representative. At 1101 on 10 October 1982, the main motor was dock tested. The Coast Guard was neither notified of the testing and repairs nor were they carried out under the cognizance of the Officer in Charge, Marine Inspection.

On 12 October 1982, at 1305 and again at 1530, while the vessel was at sea, the main propulsion unit "tripped" both the ground relay and the phase balance relay. This resulted in the SS JACKSONVILLE losing propulsion. A test revealed that the main motor was grounded on all three of its phases. The vessel was then towed to Wilmington, North Carolina, arriving on 13 October 1982.

On 15 October 1982, CWO David A. Phillips, a marine inspector for the U.S. Coast Guard, boarded the SS JACKSONVILLE at Wilmington, North Carolina, in an effort to discover why the vessel had to be towed into port. His visit constituted the first communication between the Coast Guard and Appellant regarding the grounding of the main motor.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

1. The Administrative Law Judge's finding that the grounded main propulsion motor was "unsafe until repaired" within the meaning of 46 CFR 97.30-5 was not supported by substantial evidence;

2. As a matter of law, a charge of misconduct cannot be supported by a finding that repairs were made without the cognizance of the Officer in Charge, Marine Inspection;

3. No "repairs" were ever made, so that there was nothing which would be brought to the cognizance of the Officer in Charge, Marine Inspection; and

4. The Coast Guard was informed of the grounded-out condition of the main motor "immediately upon arrival at port."

APPEARANCE: Gerard S. Doyle, Jr., Esq.

OPINION

I

Appellant contends that the Administrative Law Judge's finding that it was unsafe to use the main propulsion motor which had all three of its phases shorted to ground is not supported by the evidence. I disagree.

Appellant bases his contention on the proper operation of safety devices which intervened to prevent power from continuing to be fed to the motor. The record contains substantial evidence in the form of the machinery log and the testimony of two witnesses which substantiate that a ground relay and a phase balance relay "tripped", causing a loss of power to the motor. Had the safety devices not intervened, power would have continued to flow to the motor and then to ground. The Coast Guard inspector, CWO Phillips, testified that the safety devices provided protection to "the plant, circuits, and personnel." He also testified that "when a circuit breaker trips, it is a direct indication that there is a problem..and you start looking into the situation to see why the circuit breaker tripped; there is a safety factor there. It could cause injury to the machinery, the personnel, or possibly even start a fire". He also stated that there is a possibility that it could be very dangerous if someone attempted to operate a piece of machinery again, without finding and repairing whatever had caused the device to trip. This testimony is sufficient to support the finding of the Administrative Law Judge.

Appellant's two witnesses testified that once the safety device had activated, the motor became an inoperative piece of machinery which was not unsafe. Mr. Glebinski, the vessel owner's port engineer, further testified that even if the motor were to be reenergized, a crewman in the area would be safe, "like a bird which sits on a high tension line, and it does not get hurt." Appellant's argument, however, focuses only on danger to those in the engineroom and possible damage to the motor. It ignores the tremendous hazard to the entire vessel and crew if a vessel sails with an unreliable main propulsion motor. The dangers of this are too well known among those who familiar with ships and navigation to require proof.

Where, as here, the testimony is in conflict, I have consistently held that:

"It is the function of the Judge to evaluate the credibility of witnesses in determining what version of events under consideration is correct. Commandant's Appeal Decision 2097 (TODD). The question of what weight is to be accorded to the evidence is for the Judge to determine and, unless it can be shown that the evidence upon which he relied was inherently incredible, his findings will not be set aside on appeal.O'Kon v. Roland, 247 F.Supp. 743 (S.D.N.Y. 1965)."

Appeal Decisions 2333 (AYALA), 2302 (FRAPPIER), 2116 (BAGGETT). Since the determination of the Administrative Law Judge is reasonable and is supported by the evidence it will not be disturbed.

46 CFR 97.30-5 requires the reporting of accidents to "machinery tending to render the further use of the item unsafe until repairs are made." Since, as discussed above, the flooding rendered the further use of the main propulsion motor unsafe it should have been reported. I note that 46 CFR 4.05-1 also requires both flooding and loss of main propulsion to be immediately reported.

II

Appellant contends that the second specification failed to allege any wrongful activity and that, as a matter of law, it should be dismissed. I do not agree.

Appellant argues that the drying of the motor was neither wrongful nor prohibited, however, that is not the issue. Rather, Appellant was charged with allowing repairs to occur without the knowledge or cognizance of the Officer in Charge, Marine Inspection. The requirement for cognizance of the Officer in Charge, Marine Inspection is set forth at 46 CFR 50.05-10, a formal, duly established rule. Violation of such a rule is, by definition, misconduct. 46 CFR 5.05-20. By allowing the repairs to take place without the cognizance of the Officer in Charge, Marine Inspection, Appellant violated 46 CFR 50.05-10. Therefore the second specification supports a charge of misconduct.

III

Appellant argues that pumping water out of the motor and drying the wet motor do not constitute repairs. I disagree.

Based upon the testimony of Mr. MAKRINOS, Appellant contends that repairs must consist of the installation or replacement of damaged parts. I disagree with such a restrictive interpretation of what constitutes a repair. The word has no specialized maritime

meaning. It is defined in Webster's dictionary as follows: "to restore by replacing a part or putting together what is torn or broken; fix, restore to a sound or healthy state; renew." When the motor was flooded there is no doubt that it was in an unhealthy state. The safety devices tripped and it could no longer be safely used until it was restored to a healthy state through the removal of the water and the drying of the motor. Had these repairs not been made, the vessel would have remained in Baltimore. The fact that the restoration measures which were taken were relatively simple does not alter the fact that in its wet, grounded condition, the motor was inoperable and required repairs before it could be made operable.

IV

Appellant's final argument addresses the third specification. He contends that the Coast Guard was informed of the condition of the motor "immediately upon arrival at port." I do not agree.

Appellant argues that the appearance of the Coast Guard inspector on board the vessel within two days of its arrival satisfied the duty under 46 CFR 97.30-5 to notify the Officer in Charge, Marine Inspection of the accident "immediately upon arrival in port." The fortuitous appearance of CWO Phillips on 15 October 1982 did not fulfill Appellant's duty. This occurred approximately two days after the vessel's arrival. The time for immediate notification had already past.

CONCLUSION

There is substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated at Wilmington, North Carolina, on 22 December 1982 is AFFIRMED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 6th day of February 1984.